

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Increase Wetland Protection**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §480-X, sub-§2,** as amended by PL 2003, c. 554, §1, is further amended to read:

**2. Three-tiered review process; tiers defined.** Except as provided in subsection 1, an application for a permit to undertake activities altering freshwater wetlands must be reviewed in accordance with the following.

- A. A Tier 1 review process applies to any activity that involves a freshwater wetland alteration up to 15,000 square feet and does not involve the alteration of freshwater wetlands listed in subsection 4.
- B. A Tier 2 review process applies to any activity that involves a freshwater wetland alteration of 15,000 square feet up to one acre and does not involve the alteration of freshwater wetlands listed in subsection 4 or 5.
- C. A Tier 3 review process applies to any activity that involves a freshwater wetland alteration of one acre or more or an alteration of a freshwater wetland listed in subsection 4 or 5.

If the project as a whole requires Tier 2 or Tier 3 review, then any activity that is part of the overall project and involves a regulated freshwater wetland alteration also requires the same higher level of review, unless otherwise authorized by the department.

In determining the amount of freshwater wetland to be altered, all components of a project, including all phases of a multiphased project, are treated together as constituting one single and complete project. Activity authorized or legally conducted prior to the effective date of this section is not included.

The standards of section 480-D do not apply to projects that qualify for Tier 1 review, except that habitat standards under section 480-D, subsection 3 and water quality standards under section 480-D, subsection 5 apply to those projects. Projects that meet the eligibility requirements for Tier 1 review and that satisfy the permitting requirements set forth in subsection 3 and 6, as applicable, are presumed not to have significant environmental impact.

**Sec. 2. 38 MRSA §480-X, sub-§6, ¶B,** as amended by PL 1999, c. 243, §13, is further amended to read:

- B. Work may not occur until ~~30~~45 days after the department receives a complete application, unless written approval is issued sooner by the department. The department shall notify the applicant in writing no later than ~~30~~45 days after the department receives a complete application if the applicable requirements of this section have not been met or if the review period may be extended pursuant to section 344-B, subsection 4. If the department has not notified the applicant within the ~~30-day~~45-day review period, a permit is deemed to be granted.

**Sec. 3. 38 MRS §480-Z, 4th ¶**, as enacted by PL 1997, c. 101, §1 and affected by §2, is amended to read:

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a compensation project on the wetland management priorities identified by the department for the watershed or biophysical region in which the project is located. The department may not approve a compensation project until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article. For purposes of this section, "biophysical region" means a region with shared characteristics of climate, geology, soils and natural vegetation.

**Sec. 4. 38 MRS §480-Z, sub-§3, ¶A**, as amended by PL 2003, c. 245, §8, is further amended to read:

A. The program may include the following:

- (1) Identification of wetland management priorities on a watershed or biophysical region basis;
- (2) Identification of the types of wetland losses eligible for compensation under this subsection;
- (3) Standards for compensation fee projects;
- (4) Calculation of compensation fees based on the functions and values of the affected wetlands and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
- (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the wetland management priorities identified pursuant to subparagraph (1).

## SUMMARY

The bill adds a requirement providing that projects qualifying for Tier 1 review must meet the habitat standards under the Maine Revised Statutes, Title 38, section 480-D, subsection 3. The bill also changes the permit processing period for an application for Tier 1 activities from 30 days to 45 days.

The bill also allows the Department of Environmental Protection to base its approval of a compensation project on the wetland management priorities identified by the department for the biophysical region or the watershed in which the project is located.